



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION

**REQUEST FOR PROPOSALS # 31701-03058  
FOR NOVELL SUPPORT SERVICES**

**RELEASE # 2**

**May 31, 2011**

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**1. INTRODUCTION**

The State of Tennessee, Department of Finance and Administration, hereinafter referred to as "the State," has issued this Request for Proposals (RFP) with the intent to award a contract for the provision of phone, on-site, and on-line technical support services for the following Novell products: NetWare/eDirectory, GroupWise, SUSE Linux, Identity Manager (IDM), iManager, and OES 2 Cluster Services. In order to submit a Proposal in response to this RFP, the Proposer must be a certified Novell Gold or Platinum partner.

The RFP defines minimum service requirements; solicits proposals; details proposal requirements; and, outlines the State's process for evaluating proposals and selecting a contractor to provide the required service. Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those owned by minorities, women, and persons with a handicap or disability as well as small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

In order to assist potential Proposers in gauging the magnitude of the maintenance service activity, RFP Attachment 6.5 provides the Estimated Number of Current Users for each technology type.

- 1.1. Scope of Service, Contract Period, & Required Terms and Conditions.** The contract awarded pursuant to this RFP will be drafted in accordance with the attached *Pro Forma Contract* (Attachment 6.4.), which details the State's required:

- Scope of Services and Deliverables (section A);
- Contract Period (section B);
- Payment Terms (section C);
- Standard Terms and Conditions (section D); and,
- Special Terms and Conditions (section E).

- 1.2. Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Section 4-21-405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 1.3. RFP Communications.** Reference **RFP # 31701-03058**, in all communications relating to this RFP, and direct any such communications to the following person designated as the RFP Coordinator.

Travis Johnson  
Department of Finance and Administration  
17<sup>th</sup> Floor, Snodgrass TN Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243  
Telephone # (615) 741-5727  
Fax # (615) 741-6164  
[Travis.Johnson@tn.gov](mailto:Travis.Johnson@tn.gov)

**Unauthorized contact about this RFP with other employees or officials of the State of Tennessee may result in disqualification from consideration under this procurement process.**

Notwithstanding the foregoing, potential proposers may also contact the following as appropriate:

- staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this RFP; and
- the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Greg Spradley  
Senior Management Consultant  
Tennessee Department of Finance & Administration  
Office of Consulting Services  
312 Rosa L. Parks Avenue, Suite 1200  
Nashville, Tennessee 37243  
Phone: 615.253.8703  
Fax: 615.532.1892  
[Greg.Spradley@tn.gov](mailto:Greg.Spradley@tn.gov)  
[http://www.state.tn.us/finance/rds/consulting\\_services\\_home.html](http://www.state.tn.us/finance/rds/consulting_services_home.html)

- 1.4. **Proposer Required Review & Waiver of Objections.** Each potential proposer must carefully review this RFP, including but not limited to, all attachments (including the *Pro Forma* Contract) and any amendments, to identify any issues, questions, comments, defects, objections, or other matter requiring clarification or correction (collectively called "issues"). A potential proposer with issues concerning this RFP must provide such in writing to the State no later than the Written "Questions & Comments" Deadline detailed in the RFP Section 2, Schedule of Events. Protests based on any issues shall be considered waived and invalid if the issues have not been brought to the attention of the State, in writing, by the Proposal Deadline.

## 2. **SCHEDULE OF EVENTS**

The following RFP Schedule of Events represents the State's best estimate for this RFP. The state reserves the right, at its sole discretion, to adjust the Schedule of Events or to otherwise amend this RFP at any time. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. RFP Issued		May 10, 2011
2. Written "Questions & Comments" Deadline	2:00 p.m.	May 17, 2011

3. State Response to Written "Questions & Comments"		May 31, 2011
4. Proposal Deadline	2:00 p.m.	June 8, 2011
5. Qualifications Evidence Evaluations Completed		June 15, 2011
6. Cost Proposals Opened and Lowest Cost Identified	2:00 p.m.	June 16, 2011
7. Award Notice and RFP Files Opened for Public Inspection	2:00 p.m.	June 21, 2011
8. Contract Signing		July 1, 2011
9. Contractor Signature Deadline	2:00 p.m.	July 8, 2011

### 3. PROPOSAL REQUIREMENTS

- 3.1. **Two Part Proposal.** A proposal in response to this RFP must respond only as required by this RFP document (including all attachments) as may be amended. It must consist of two parts: Qualifications Evidence (including any supporting documentation) and a Cost Proposal.

The State may determine a proposal to be non-responsive and ineligible for contract award if the Proposer fails to address all proposal items, organize and properly reference the Qualifications Evidence, or complete the Cost Proposal exactly as provided and required below. A Proposer is liable for any and all proposal errors or omissions.

- 3.1.1. Qualifications Evidence – The *Qualifications Evidence Guide* (Attachment 6.2. of this RFP) details specific mandatory requirements for making a proposal in response to this RFP. A Proposer must duplicate and use RFP Attachment 6.2., completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the Qualifications Evidence portion of the proposal. All information and documentation included within a proposal must address a specific requirement of RFP Attachment 6.2. and must be clearly referenced. The State will deem any information not meeting these criteria to be extraneous and will not review it.

**NOTICE: DO NOT include any pricing or cost information in any part of the Qualifications Evidence. If a Proposer includes any pricing or cost information amount of any type (even pricing relating to other projects) within the Qualifications Evidence, the state will deem the proposal non-responsive and reject it.**

- 3.1.2. Cost Proposal – A Proposer must use an exact duplicate of RFP Attachment 6.3., the *Cost Proposal Guide*, to record ONLY the proposed cost EXACTLY as indicated. The Cost Proposal must incorporate ALL costs for ALL services under the contract for the total contract period. A Proposer must NOT record any other rates, amounts, or information except that which is specifically required.

A Proposer must sign and date the completed Cost Proposal.

**NOTICE: The state will deem the proposal non-responsive and reject it if a Proposer fails to submit a Cost Proposal exactly as required.**

- 3.2. **Proposal Delivery.** A Proposer must ensure that both proposal components offered in response to this RFP, the Qualifications Evidence and the Cost Proposal, meet all form and content requirements detailed within this RFP, including but not limited to, required signatures. Further, the Proposer must submit the two proposal components as specified below. A proposal failing to meet delivery requirements may be deemed non-responsive and ineligible for contract award.

3.2.1. Packaging

- 3.2.1.1. The Proposer must present one (1) original Qualifications Evidence document (covered by and addressing RFP Attachment 6.2.) labeled:

**QUALIFICATIONS EVIDENCE – RFP # 31701-03058**

and six (6) copies in the form of one (1) digital document in “PDF” format properly recorded on its own, otherwise blank, standard CD-R recordable disc labeled:

**COPY – QUALIFICATIONS EVIDENCE – RFP # 31701-03058**

The Qualifications Evidence document and digital copy must be placed in a sealed package labeled:

**DO NOT OPEN – QUALIFICATIONS EVIDENCE – RFP # 31701-03058**

**PROPOSER: [PROPOSER LEGAL ENTITY NAME]**

NOTE: Any discrepancy between the document and digital copy may result in the State rejecting the proposal as non-responsive.

- 3.2.1.2. The Proposer must present one (1) Cost Proposal document (using an exact duplicate of RFP Attachment 6.3.) labeled:

**COST PROPOSAL – RFP # 31701-03058**

and one (1) copy in the form of a digital document in “PDF” format properly recorded on separate, blank, standard CD-R recordable disc labeled:

**COPY – COST PROPOSAL – RFP # 31701-03058**

The Cost Proposal original document and copy disc must be placed in a separate, sealed package labeled:

**DO NOT OPEN – COST PROPOSAL – RFP # 31701-03058**

**PROPOSER: [PROPOSER LEGAL ENTITY NAME]**

In the event of a discrepancy between the Cost Proposal document and the digital copy, the document will take precedence over the digital copy.

- 3.2.1.3. If the Proposer encloses the separate, sealed Qualifications Evidence and Cost Proposal components in a larger package for mailing or delivery, the Proposer must label the outermost package:

**SEPARATELY SEALED QUALIFICATIONS EVIDENCE & COST PROPOSAL**

**RFP # 31701-03058**

**PROPOSER: [PROPOSER LEGAL ENTITY NAME]**

- 3.2.1.4. The Proposer must submit a proposal, as required, to the following address:

Travis Johnson  
Department of Finance and Administration  
17<sup>th</sup> Floor, Snodgrass TN Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243  
Telephone # (615) 741-5727  
Fax # (615) 741-6164

3.3. **Proposal Deadline.** A Proposer must ensure that the State receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal.

3.4. **Proposer and Proposal Prohibitions:**

- A Proposer may NOT alter or revise proposal documents after the Proposal Deadline unless such is formally requested, in writing, by the State.
- A proposal must NOT include the Proposer's own contract terms and conditions.
- A proposal must NOT restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this RFP or the Cost Proposal.
- A Cost Proposal must NOT result from any collusion between Proposers.
- A Proposer must NOT provide, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect.

4. **GENERAL INFORMATION & REQUIREMENTS**

4.1. **Conflict of Interest.** This RFP shall not result in a contract with:

- an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this RFP;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this subsection, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term "employee of the State of

Tennessee” shall not include individuals performing volunteer services for the State of Tennessee.

- 4.2. **State Right of Rejection.** Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.

The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal's minor variances from full compliance with this RFP. If the State waives variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this RFP.

- 4.3. **State Right to Refuse Personnel.** The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.4. **Disclosure of Proposal Contents**

- 4.4.1. Each proposal and all materials submitted to the State in response to this RFP become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

- 4.4.2. The State will hold all proposal information in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Proposers submitting timely proposals may be available to the public, upon request, after the Proposal Deadline detailed in the RFP Section 2, Schedule of Events.

- 4.4.3. Proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7), after the State completes proposal evaluations and issues an Evaluation Notice.

4.5. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

5. **PROPOSAL EVALUATION & CONTRACT AWARD**

The RFP Coordinator will review each proposal for compliance with all general RFP requirements. Then, a Proposal Evaluation Team of at least three contracting agency employees will review the Qualifications Evidence and any supporting documentation for each compliant proposal. For a proposal in response to this RFP to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents that the Proposer meets the mandatory qualifications and experience requirements and is otherwise, at least, minimally acceptable as a contractor for the subject services. The State will document, in writing, any determination (and the specific reasons therefore) that a Proposer's Qualification Evidence failed to adequately address and document compliance with mandatory requirements and acceptability for contract award.

After the evaluation of Qualifications Evidence is completed, the RFP Coordinator will review the Cost Proposal submitted by each Proposer deemed acceptable for contract award. The RFP Coordinator will assess whether each Cost Proposal complies with RFP requirements without qualification. The RFP Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the RFP.

The RFP Coordinator will identify the responsive, responsible Cost Proposal indicating the lowest cost to the state, and in the best interests of the state, said Proposer will be selected for contract award. In the event that two or more Proposers offer the same lowest cost, the RFP Coordinator will request a Best and Final Cost Proposal from the tied Proposers. Should a second tie result, the State will award the contract to one of the tied Proposers by chance.

**PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual legally empowered to contractually bind the Proposer must sign and complete the *Proposal Statement of Certifications and Assurances* below as required, and this signed statement must be included with the proposal as required by the RFP Attachment 6.2.

**The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Proposer will comply with all of the provisions and requirements of the RFP.
2. The Proposer will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the RFP.
3. The Proposer accepts and agrees, without qualification, to all terms and conditions set out by the *Pro Forma Contract* attached to the RFP.
4. The Proposer acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Proposer will comply, as applicable, with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the RFP is accurate.
7. The proposal submitted in response to the RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the RFP or any resulting contract.

*By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.*

**PROPOSER SIGNATURE & DATE:**

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**PRINTED NAME & TITLE:**

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**PROPOSER LEGAL ENTITY NAME:**

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**PROPOSER FEIN or SSN:**

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### QUALIFICATIONS EVIDENCE GUIDE

The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below, and use this guide to cover the Qualifications Evidence section of the proposal (as its table of contents).

Prior to State evaluation of Qualifications Evidence, the RFP Coordinator will review each proposal for compliance with all RFP requirements, including but not limited to:

- The proposal must be delivered to the State no later than the Proposal Deadline.
- The Qualifications Evidence and the Cost Proposal must be packaged separately as required.
- The Qualifications Evidence must NOT contain cost or pricing information of any type.
- The proposal must NOT contain any qualification, limitation, or other restrictions.

The Proposal Evaluation Team will, then, review the Qualifications Evidence to determine if the mandatory requirement items are addressed as required and that it documents that the Proposer meets each mandatory qualification and experience requirement and is otherwise, at least, minimally acceptable as a contractor for the subject services.

<b>PROPOSER LEGAL ENTITY NAME:</b>		
<b>Proposal Page #</b> (Proposer completes)	<b>Item Ref.</b>	<b>QUALIFICATIONS EVIDENCE</b>
	<b>6.2.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the proposal.
	<b>6.2.2.</b>	Provide the RFP Attachment 6.1., <i>Proposal Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.
	<b>6.2.3.</b>	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.  <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	<b>6.2.4.</b>	Provide a statement of whether the Proposer or, to the Proposer's knowledge, any of the Proposer's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.  <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	<b>6.2.5.</b>	Provide a statement of whether there is any material, pending litigation against the Proposer that the Proposer should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Proposer's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Proposer's performance in a contract pursuant to this RFP.  <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>  <i>All persons, agencies, firms, or other entities that provide legal opinions regarding the Proposer must be properly licensed to render such opinions. The State may require the Proposer to submit proof of such licensure detailing</i>

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ATTACHMENT 6.2.

<b>PROPOSER LEGAL ENTITY NAME:</b>		
<b>Proposal Page #</b> (Proposer completes)	<b>Item Ref.</b>	<b>QUALIFICATIONS EVIDENCE</b>
		<i>the state of licensure and licensure number for each person or entity that renders such opinions.</i>
	<b>6.2.6.</b>	<p>In order to submit a Proposal for this RFP, the Proposer <b>must</b> be a certified Novell “Gold” or “Platinum” Partner at the time of Proposal submission.</p> <p>Provide written evidence that the Proposer is a Novell Gold or Platinum Partner. This written evidence must be in the form of a letter from Novell, dated no earlier than three (3) months prior to the Proposal Due Date, confirming that the Proposer is a Novell Gold or Platinum Partner.</p>

**COST PROPOSAL GUIDE**

**NOTICE: THE COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

**COST PROPOSAL SCHEDULE** – The Cost Proposal, detailed below, shall indicate the proposed price for all services, during the entire contract period, as set forth in the *Pro Forma Contract* attached to the RFP. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The Proposer must enter only one rate per cost cell; the proposer must **NOT** enter more than one rate or a range of rates in a single cost cell. The Proposer must **NOT** add any other information to the Cost Proposal.

The Proposer may enter zero (0) in a required proposed cost cell; however, the Proposer should not leave any proposed cost cell blank. For evaluation and contractual purposes, the State shall interpret a blank Proposed Cost cell as zero (0).

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do **NOT** and should **NOT** be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall **NOT** create rights, interests, or claims of entitlement in the Proposer.

*This Cost Proposal must be signed by an individual empowered to legally bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to contractually bind the proposing entity.*

<b>PROPOSER SIGNATURE &amp; DATE:</b>			
<b>PRINTED NAME &amp; TITLE:</b>			
<b>PROPOSER LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>Evaluation Factor</b>	<b>Evaluation Cost (cost x factor)</b>
Maintenance Fee. Propose the cost that the vendor will charge each quarter for the services described in Contract Section A, Scope of Services, with the exception of On-Site Support Personnel (Contract Section A.8.)  Note: this fee shall be paid at the beginning of the Maintenance period in question.	\$ _____ per Quarter	<b>2</b>	
On-Site Support – Short-Term Engagement. Propose an hourly rate per person to perform On-Site Support for an engagement lasting from one (1) to twenty-four (24) hours.  Note: for compensation purposes the minimum engagement length shall be eight (8) hours.	\$ _____ per Person / per Hour	<b>240</b>	

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ATTACHMENT 6.3.

<b>PROPOSER LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>Evaluation Factor</b>	<b>Evaluation Cost</b> (cost x factor)
On-Site Support – Long-Term Engagement. Propose an hourly rate per person to perform On-Site Support for an engagement lasting in excess of twenty-four (24) hours.	\$ _____ per Person / per Hour	<b>80</b>	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above): <i>The state will use this sum to determine the Cost Proposal reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			

***PRO FORMA CONTRACT***

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of Novell Support Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Federal Employer Identification, Social Security, or Edison Registration ID # **Number**

Contractor Place of Incorporation or Organization: **Location**

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. General Scope. The Contractor shall provide to State contact persons ("State Contacts") around-the-clock (24 X 7 X 365) immediate "Access" to phone support for technical issues/problems (collectively "issues"), as described herein.
- A.3. Toll-Free Number(s). The Contractor shall provide Access via a minimum of one toll-free telephone number. This number (or these numbers) shall be referred to herein as "Technical Support Line(s)." **The State may use the Technical Support Line to notify the Contractor of issues with any of the six (6) product lines: Netware, GroupWise, Linux, Identity Manager (IDM), iManager, and OES 2 Novell Cluster Services.** The Technical Support Line(s) shall be capable of receiving at least three (3) simultaneous incoming calls.
- A.4. Number of State Contacts. **Access shall be provided for up to two (2) State Contacts for each "Supported Novell Product" (i.e. Netware, GroupWise, Linux, IDM, iManager, and OES 2 Novell Cluster Services).**
- A.5. Phone Support Personnel.
  - a. All Contractor staff that respond to State issues via the Technical Support Line ("Phone Support Personnel") shall be experienced field engineers having expertise in the following Novell technologies currently used by the State's Office for Information Resources (OIR):
    - i. NetWare 6.6 SP5 and later / eDirectory 8.7.3.9 and later
    - ii. GroupWise 8.02 and later
    - iii. SUSE Linux Enterprise Server (SLES) 2.0 and later
    - iv. IDM version 3.51 and later
    - v. iManager version 2.7 and later
    - vi. OES 2 Novell Cluster Services version 1.8 and later**
  - b. "Experienced field engineers" in this context means that the Phone Support Personnel must be able to provide effective assistance to the State Contact without having to rely on resources beyond themselves to an extent that unreasonably delays the response and/or resolution.
  - c. In the event that Phone Support Personnel are not themselves Novell senior support engineers, then the Phone Support Personnel shall have immediate access to senior support engineers, and there shall be no unreasonable delays introduced by such referrals.

- d. In all cases, the State shall determine what constitutes an unreasonable delay.

A.6. Issue Severity Levels/Resolution Expectations.

- a. There shall be two levels of issue severity, which shall be determined by the State:
  - i. Critical – Critical issues are defined as issues that: (a) seriously impair the ability of users of the State's Novell Products to do their jobs; and/or (b), if not corrected, could potentially result in damage to State data or other technical resources.
    - (1) The State may notify the Contractor on a round-the-clock (24 X 7 X 365) basis concerning issues that the State deems Critical.
    - (2) Phone Support Personnel shall respond to the State within one (1) hour of State notification, regardless of the time of day or week the State notifies the Contractor.
    - (3) For Critical issues the Contractor shall bring to bear all reasonable resources to resolve the issue as quickly as possible. At the State's request, Contractor staff shall work around the clock until the issue is resolved.
  - ii. Non-Critical – Non-Critical issues are those: (a) for which reasonable "workarounds" exist; and (b) that do not have the potential to damage State data or other technical resources.
    - (1) The State may notify the Contractor between the hours of six-o'clock a.m. and six-o'clock p.m. (6:00 AM – 6:00 PM) Central Time, five (5) days a week, Monday through Friday, exclusive of State holidays, concerning an issue that the State deems Non-Critical. This notification window shall be known as the "Non-Critical Notification Window."
    - (2) Phone Support Personnel shall respond to the State within four (4) business hours of State notification. For purposes of tracking the response turn-around time for Non-Critical issues, the Contractor must count all elapsed time that occurs during the Non-Critical Notification Window. For example, if the State were to notify the Contractor at 3:00 PM, on a Friday afternoon, with a State holiday occurring the following Monday, the Contractor must respond to the State no later than 7:00 AM on the following Tuesday.
    - (3) For Non-Critical issues, the Contractor shall demonstrate dedication and sustained effort toward the issue's resolution.
- b. In the event that a Critical or Non-Critical issue is not resolved within a timeframe that the State deems reasonable, given the severity level, the State may escalate the issue pursuant to Contract Section A.7.
- c. For all issues, the Contractor shall work until a resolution satisfactory to the State is provided, consistent with the Issue Severity Levels above.

A.7. Account Manager/Issue Escalation Process.

- a. The Contractor shall assign an experienced Account Manager to work with State Contacts. The Account Manager must be familiar with the State's environment and must be sufficiently knowledgeable to be able to respond to all of the State's inquiries and be able to bring appropriate resources to bear to effect timely resolutions.

- b. This Account Manager shall be immediately available by toll-free telephone number on a round-the-clock (24 X 7 X 365) basis, to act as a 1<sup>st</sup> level of escalation, in the event that Phone or On-Site Support Personnel are unable to resolve an issue.
- c. The Account Manager shall be the State's sole point-of-contact for issue escalation. Upon receiving an escalation notice from the State, the Account Manager shall assume full responsibility to bring sufficient resources to bear to resolve the issue as quickly as possible, consistent with the issue's severity level.
- d. In the event that the Account Manager must be unavailable to the State (for example, sickness, vacation, or personnel emergency), the Contractor shall arrange for a backup person to be immediately available to the State. The backup Account Manager must be a person whose qualifications are equal to or better than the person for whom he or she is substituting.
- e. The Account Manager shall also be available, upon reasonable notice by the State to participate in conference calls and/or on-site meetings to support the overall management of the Novell Support project and related tasks.

**A.8.** On-Site Support Personnel. At the State's request, the Contractor shall provide On-Site (at a State facility located in the Nashville/Davidson County area) support services.

- a. The Contractor shall make its best efforts to ensure that On-Site Support Personnel arrive at the State site as soon as possible after State notification.
- b. On-Site Support Personnel must be experienced field engineers having expertise in one or more of the Novell technologies listed in Contract Section A.5, whichever is/are appropriate to ensure a rapid resolution of the specific issue.
- c. There shall be two types of On-Site Support engagements, and the State will compensate the Contractor for this work using the appropriate hourly rate, as detailed in Contract Section C.3.b:
  - i. Short-Term Engagement – This is a support engagement that lasts from one (1) to twenty-four (24) person-hours. However, given that the State will only invoke On-Site Support in the most critical and exigent of circumstances, and given that such tasks will typically require significant amounts of Contractor personnel time to resolve, the State shall guarantee a minimum number of person-hours for each On-Site Support engagement of eight (8) hours. This will enable the Contractor to offset the travel costs that could be incurred on short notice, and which the Contractor must have already built into the Short-Term Engagement hourly rates in Section C.3.b.
  - ii. Long-Term Engagement – This is a support engagement that lasts for a period of time greater than twenty-four (24) person-hours.
- d. The hourly rates in Section C.3.b are “composite rates,” taking into account the possibility of varying support personnel expertise/experience.
- e. The hourly rates in Section C.3.b are to be used exclusively for On-Site Support Personnel compensation. All other tasks described in this Scope of Services are to be provided within the standard Maintenance Fee, which also appears in Section C.3.b.

**A.9.** Remote Access. The Contractor must establish and maintain the telecommunications ability to remotely access all OIR systems dependent upon the Novell technologies and which the Contractor is responsible for providing support. The State reserves the right to upgrade/revise its telecommunications environment, as necessary, throughout the term if the Contract; if this occurs, the Contractor is responsible for re-establishing and maintaining the remote access capability, at no additional cost to the State.



**A.10.** Novell Technologies Decommissioning. It is the State's intent to decommission the Novell technologies used by OIR, which are listed in Contract Section A.5.a above, and to move to alternative technologies as soon as possible. Therefore, the State reserves the right, as described in Contract Section D.3, to terminate this Contract for convenience at any time during its term.

**B. CONTRACT PERIOD:**

B.1 Initial Term. This Contract shall be effective for the period beginning August 1, 2011, and ending on January 31, 2012. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than six (6) months and a total contract term of no more than eighteen (18) months, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)**. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Maintenance Fee. To be paid on a quarterly basis, at the	\$ <b>Number</b> per Quarter

## RFP # 31701-03058

## ATTACHMENT 6.4.

beginning of the Maintenance period in question.	
On-Site Support – Short-Term Engagement. For compensation purposes, the minimum Short-Term Engagement length shall be eight (8) hours.	\$ <b>Number</b> per Hour
On-Site Support – Long-Term Engagement	\$ <b>Number</b> per Hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Alan Atherton  
 Director, Technical Services  
 15<sup>th</sup> Floor, W.R.S. Tennessee Tower  
 312 Rosa L. Parks Ave  
 Nashville, TN 37243-1102

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Department of Finance and Administration, Office for Information Resources
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
  - iv. Amount Due by Service
  - v. Total Amount Due for the invoice period

- b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and

- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
  - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Alan Atherton  
 Director, Technical Services  
 15<sup>th</sup> Floor, W.R.S. Tennessee Tower  
 312 Rosa L. Parks Ave  
 Nashville, TN 37243-1102  
[Alan.Atherton@tn.gov](mailto:Alan.Atherton@tn.gov)  
 Telephone # (615) 253-6852  
 FAX # (615) 741-4996

The Contractor:

Contractor Contact Name & Title  
 Contractor Name

Address  
 Email Address  
 Telephone # Number  
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State

or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.



- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
  - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
  - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.9. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
  - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
  - d. any technical specifications provided to proposers during the procurement process to award this Contract;
  - e. the Contractor's proposal seeking this Contract.
- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.11. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.12. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
  - partial performance of any term or provision of the Contract;
  - any act prohibited or restricted by the Contract, or
  - violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
  - (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.

- (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (3) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.
- (4) Refund of Residual Maintenance Fee— In the event of Contract Termination as a result of Breach, the Contractor shall refund to the State a prorated amount of the Maintenance Fee for the quarter in question, which amount is calculated from the point in time at which the State provided the Contractor with written notice of the Breach.

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.13. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount
- E.14. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

IN WITNESS WHEREOF,

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

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**MARK A. EMKES, COMMISSIONER**

**DATE**

RFP # 31701-03058

ATTACHMENT 6.4.

ATTACHMENT A

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

**ESTIMATED NUMBER OF CURRENT USERS**

GroupWise	42198
Identity Manager	42135
NetWare Cluster Services Server	16
OES-NetWare	2469 enabled accounts